

A.F.R.

14-08-2005

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

W.P. No.259 of 2005

PETITIONERS

1. Union of India,
Through : The Secretary,
Ministry of Railway,
Rail Bhawan, New Delhi
2. The General Manager,
S.E. Railway Garden-Reach,
Kolkata-43 (Now The General
Manager, S.E.C. Railway, Bilaspur,
Chhattisgarh)
3. The Chief Personal Officer,
(Pension Section) S.E. Railway,
Garden-Reach, Kolkata-43 (Now the
Chief Personnel Officer (Pension
Section) S.E.C. Railway Bilaspur,
Chhattisgarh)
4. The Divisional Railway Manager,
South Eastern Railway, Bilaspur,
Chhattisgarh (Now the Divisional
Railway Manager, S.E.C. Railway,
Raipur, Chhattisgarh)
5. The Senior Divisional Personnel
Officer (Settlement Section), South
Eastern Railway, Bilaspur
Chhattisgarh (Now The Senior
Divisional Personnel Officer, S.E.C.
Railway, Raipur, Chhattisgarh)

All through Authorised Officer in
charge of the case Sr. D.P.O., S.E.C.
Railway, Raipur, Chhattisgarh

VERSUS

RESPONDENTS:

1. Smt. Namita Ghosh,
Wd/o Late B.C. Ghosh,
Ex PW-I/III, Bilaspur Division
S.E. Railway, Resident of Raipur,
Chhattisgarh
2. The Central Administrative Tribunal,
Through : The Registrar, CAT, Bench
at Jabalpur, Madhya Pradesh.

Present: Shri Vinay Harit, learned Sr. Advocate with Shri I.N. Shrivastava, learned counsel for the petitioners/Railway. Shri H.B. Agrawal, learned Sr. Advocate with Shri Manish Agrawal, learned counsel for the respondent No.1.

ORAL ORDER

(Passed on 14th August, 2006)

The following oral order of the Court was passed by
S.R. NAYAK, C.J.

The Union of India and the authorities of South East Central Railway feeling aggrieved by the order of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short "the Tribunal") dated 9th September 2004 passed in Original Application No. 906 of 2002 have preferred this writ petition under Articles 226 and 227 of the Constitution of India.

(2) The facts of the case, in brief, are as follows:

Late B.C.Ghosh, who is husband of the first respondent, namely, Smt. Namita Ghosh, was born on Non-Pensionable Establishment of the then South Eastern Railway on 28-08-1950 and he was governed by SCPF Rules. When the matter stood thus, the administration of the South Eastern Railway introduced "Family Pension Scheme" with effect from 01-01-1964. In terms of the said scheme, only those employees who are born on the establishment on 01-01-1964 and thereafterwards were entitled to benefit of the said scheme. However, the administration of the South Eastern Railway subsequently extended the benefit of the said scheme even to those employees who are born on the establishment prior to 01.01.1964, but subject to such employees exercising the option in that regard. The husband of the first respondent died on 04-01-1981 in harness. Admittedly, he did not exercise his option before he died in

harness on 04-01-1981. After the demise of the husband, the first respondent made an application on 12-10-2001 to the Chief Personnel Officer (Pensionary Grievances) South Eastern Railway to pay family pension in terms of the said scheme. It appears that there was no immediate response to the above application of the first respondent and that led to the first respondent instituting O.A. No. 484 of 2002 before the Tribunal and the Tribunal at the stage of admission itself on 24-07-2002 disposed of the O.A. and directed the administration of the South Eastern Railway to consider and dispose of the above application of the first respondent. Accordingly, the administration of the South Eastern Railway having considered the application rejected her request vide order dated 27-12-2002. Feeling aggrieved by the said refusal, the first respondent again instituted O.A. No. 906 of 2002.

(3) Before the Tribunal, the petitioners herein contested the claim of the first respondent by filing return. On behalf of the administration of the South Eastern Railway, it was contended that the husband of the first respondent did not exercise the option till his death on 04-01-1981 and therefore, the benefit of the family pension scheme could not be extended to the first respondent.

(4) The Tribunal, however, having opined that if the husband of the first respondent were to alive beyond 04-01-1981, he would have exercised the option before the cut-off date, i.e., on 22-02-1981 and in that event, the first respondent would have been entitled to the family pension in terms of the said scheme, allowed the application and set aside the refusal order passed by the administration of the South Eastern Railway and issued a direction to the administration of the South Eastern Railway

to calculate and pay the family pension to the first respondent in accordance with the scheme, within three months from the date of receipt of a copy of that order. Hence, this writ petition has been filed by the aggrieved South Eastern Railway and its authorities.

(5) We have heard learned counsel for the parties. The same contentions which were urged before the Tribunal were reiterated before us also.

(6) Having heard learned counsel for the parties, we are of the considered opinion that the reason given by the learned Tribunal to allow the application is *ex facie* perverse and not sound. The scheme introduced with effect from 01-01-1964 initially covered only those employees who made entry into service of the South Eastern Railway on 01-01-1964 and thereafterwards. However, subsequently, the administration of the South Eastern Railway extended the benefit of the scheme even to those who made entry into service of the South Eastern Railway prior to 01-01-1964, but, subject to a condition that they should opt for the scheme. Admittedly, the husband of the first respondent did not opt for the scheme till his death in harness on 04-01-1981. The claim of the first respondent-widow to seek family pension under the scheme introduced w.e.f. 01-01-1964 should be examined with reference to the rights and obligations of the parties as on the relevant date i.e. on 04-01-1981 when the husband of the first respondent died. It is nobody's case that as on 04-01-1981, the widow of the deceased employee acquired any right to claim family pension under the scheme. If that is the legal position, the widow of the deceased employee is not entitled to claim family pension under the scheme. The question whether if the deceased

employee were to alive beyond 04-01-1981, he would have opted for pension under the scheme is totally hypothetical and imaginary. The order that to be made by the Tribunal or this Court cannot rest on imagination or guess-work, but it should rest on concrete facts established in the case. The established facts in this case would show that as on 04-01-1981 the widow of the deceased employee was not entitled to family pension in terms of the Family Pension Scheme introduced on 01-01-1964. In that view of the matter, the impugned order of the Tribunal cannot be sustained.

(7) In the result, we allow the writ petition and set aside the order of the Tribunal and dismiss the O.A. No. 906 of 2002. In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge